



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

FILED

07-24-06
02:58 PM

Application of Southern California Edison)
Company (U 338-E) for Authority to Recover)
Capital Additions to its Fossil Generating)
Facilities Made Between January 1, 1997 and)
March 31, 1998 or the Date of Divestiture for)
Those Generating Facilities Divested by July 8,)
1998 and Related Substantive and Procedural)
Relief.)

Application 99-04-024
(Filed April 19, 1999)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) PETITION FOR
MODIFICATION OF DECISION NO. 06-06-038**

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Dated: **July 24, 2006**

Southern California Edison Company's (U 338-E) Petition For Modification Of Decision No. 06-06-038

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MODIFICATION OF DECISION NO. 06-06-038**

Pursuant to Rule 47 of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure, Southern California Edison Company (SCE) hereby submits its Petition for Modification of Decision (D.) 06-06-038 Granting Limited Rehearing of D.04-02-025 as to certain 1997-98 capital additions projects.

I.

SUMMARY OF REQUEST

SCE respectfully requests that the Commission modify D.06-06-038 to reflect the fact that the costs of the 1997-98 capital additions projects were recovered through the Transition Cost Balancing Account (TCBA) as an offset to the sale price of the divested generation plant to determine the gain-on-sale. The Procurement-Related Obligations Account (PROACT)

Settlement Agreement¹ prohibits any changes occurring after August 31, 2001 to the TCBA balance that would affect customer rates. D.06-06-038 should be modified to note that the limited rehearing concerning the 1997-98 capital additions projects cannot affect customer rates. As a result, SCE recommends that the Commission modify D.06-06-038 to eliminate the limited rehearing because it contemplates a remedy that is unavailable.

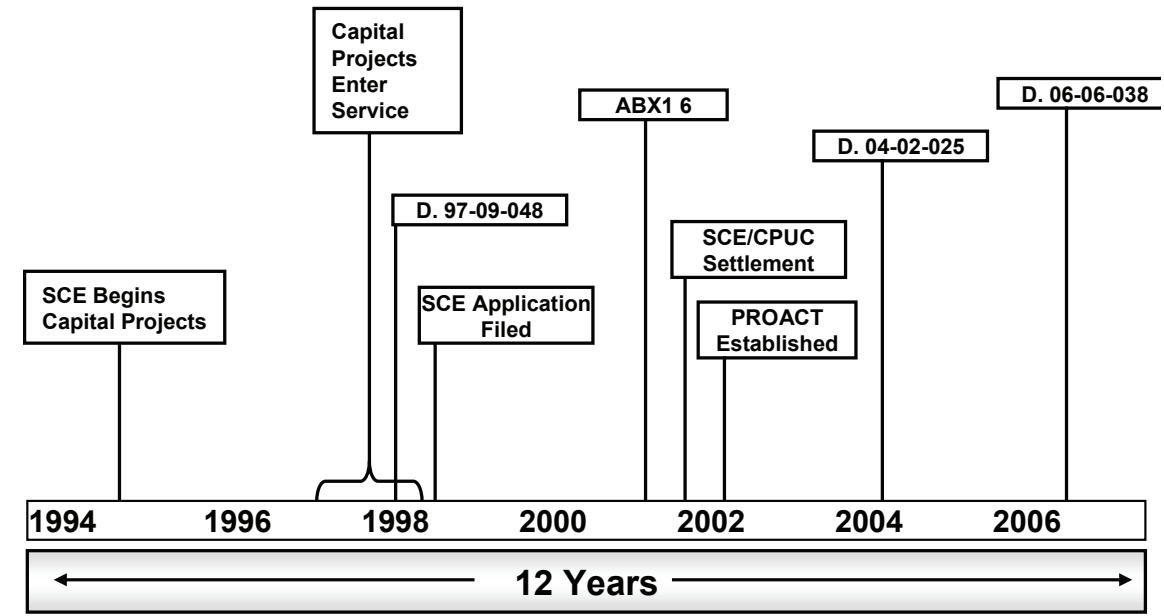
II.

THE COMMISSION CHOSE NOT TO ACT ON SCE'S APPLICATION, LETTING EVENTS OVERTAKE IT

D.06-06-038 seeks to have the Commission reassess decisions made by SCE more than ten years ago. As you can see from Figure II-1 below, SCE began work on some of these projects 12 years ago. They entered service eight or nine years ago. SCE filed its Application in this docket seven years ago. Evidentiary hearings in this proceeding were held in February 2000, more than six years ago. The case was submitted upon filing of reply briefs in April 2000. The purpose of the proceeding, as discussed below, was to allow CTC recovery of the costs of 1997-98 capital additions projects.

¹ The Settlement Agreement referred to as the "PROACT Settlement Agreement" was a settlement of litigation brought by SCE against the CPUC at the United States (U.S.) Federal District Court. This litigation alleged that the Commission had failed to allow SCE to recover its procurement-related costs. The settlement of this litigation established the PROACT. As such, it is referred to herein as the PROACT Settlement Agreement.

Figure II-1
1997-1998 Capital Additions Timeline



As electric industry restructuring commenced, state policy presumed that utility ownership of generation assets could be problematic. As a result, SCE had divested all of its oil/gas-fired generating assets by mid-1998. With regard to these divested generating assets, the purpose of the 1997-98 capital additions application was to provide for CTC recovery of those capital additions to divested plants that occurred prior to their divestiture in 1998.

Since the submission of this proceeding in April 2000, the Power Exchange (PX) became dysfunctional, closed, and entered bankruptcy. Beginning in May 2000, PX prices began to spike to extremely high levels. SCE's rates were frozen. SCE reached a point in January 2001, where it could no longer purchase power to serve its customers and the state assumed this obligation for SCE's customers. SCE filed a complaint against the Commission in the United States Federal District Court contending federal law required the Commission to permit SCE to recover in retail rates the full amount of its wholesale electric procurement obligation. SCE and

the Commission resolved this litigation by entering into the PROACT Settlement Agreement on October 2, 2001.² The Federal District Court adopted the PROACT Settlement Agreement in a Stipulated Judgment on October 5, 2001. Resolution E-3765, dated January 23, 2002, implemented the PROACT.

The Commission's issuance of D.06-06-038 in June 2006 puts SCE in a difficult position. SCE retains the burden of proof to support its decisions made over ten years ago on capital projects on plants divested nine years ago. It is patently unfair for the Commission to delay resolution of these issues but continue to impose the same burden of proof on SCE. That being said, the Commission should modify D.06-06-038 to recognize that the issues in this docket have simply been overtaken by other events.

The Commission did not issue a decision in this docket during the pendency of the District Court litigation between the Commission and SCE. In fact, the Commission did not issue a decision in this docket until February 2004, four years after evidentiary hearings ended. It is not surprising, given the significance of the events that occurred in 2000 and 2001, that certain assumptions underlying the decision issued in 2004 were no longer valid, especially the assumption of the existence of a rate recovery mechanism – the TCBA – that had been terminated. The issues in this docket have simply been overtaken by other events, and it's not possible to reconstruct this fairly.

² Stipulated Judgment, dated October 5, 2001, Southern California Edison Company v. Loretta Lynch, Case No. 00-12056-RSWL (Mex).

III.

D.06-06-038 ERRS BY OVERLOOKING TERMS OF THE PROACT SETTLEMENT AGREEMENT

A. The PROACT Settlement Agreement Eliminated Any Further CTC Recovery Through The Transition Cost Balancing Account (TCBA)

The PROACT Settlement Agreement permanently eliminated rate recovery of amounts in the TCBA.³ The purpose of the PROACT Settlement Agreement was to settle SCE's lawsuit against the Commission associated with its failure to appropriately adjust SCE's rates to reflect increased costs.⁴ Pursuant to the PROACT Settlement Agreement, balances in SCE's TCBA, as of August 31, 2001, shall have no further impact on SCE's retail electric rates.⁵ SCE utilized the 1997-98 capital additions costs as an offset to the sales price received for the divested plants when it recorded the gain on sale in the TCBA in 1998. SCE wrote off approximately \$4.2 billion related to the TCBA balance at August 31, 2001. So, included in that TCBA balance on August 31, 2001 were the 1997-98 capital additions projects at issue in this proceeding. Any retroactive changes to the TCBA cannot affect customer rates. D.06-06-038 correctly noted that these costs had already been recovered in rates or amortized by SCE.⁶ However, D.06-06-038 erred by assuming that future adjustments could be made to the TCBA to reflect in customer rates the results of a limited rehearing ordered by the decision.

B. Competitive Transition Charge (CTC) Recovery Of 1997-98 Capital Additions Is A Moot Issue

SCE filed its Application for Competitive Transition Charge (CTC) recovery of its 1997-98 capital additions in April 1999. The purpose of the application was for the Commission to

³ PROACT Settlement Agreement, Section 2.8.

⁴ Stipulated Judgment, dated October 5, 2001, U.S. District Court Case No. 00-12056-RSWL (Mex), p. 2.

⁵ PROACT Settlement Agreement, Section 2.8.

⁶ D.06-06-038, p. 4.

find these projects reasonable for purposes of offsetting the sales price for the divested generating facilities and recovering those projects through the TCBA.⁷ D.06-06-038 correctly notes that on October 2, 2001, the Commission and SCE entered into the PROACT Settlement Agreement.⁸ D.06-06-038 further correctly noted that the Commission issued Resolution E-3765 in January 2002 approving the structure and operation of the PROACT.⁹ But, D.06-06-038 ignores the implications of the PROACT Settlement Agreement on a limited rehearing concerning CTC recovery of 1997-98 capital additions.

C. No Further Adjustment Of The TCBA To Account For A Disallowance Of 1997-98 Capital Additions Can Affect Customer Rates

Section 2.8 of the PROACT Settlement Agreement states that:

Balances in SCE's TCBA as of August 31, 2001 shall have no further impact on SCE's retail electric rates, Surplus or Recoverable Costs, except to the extent the CPUC authorizes the recovery after such date of costs previously recorded in the TCBA (e.g., accelerated amortization of SCE's investment in nuclear plants). Recoverable Costs incurred after August 31, 2001, which would otherwise have been recorded in the TCBA, shall be recovered in rates in accordance with further orders of the CPUC, whether or not the CPUC chooses to continue to have such costs recorded in the TCBA.¹⁰

D.06-06-038 identified 6 capital additions projects for limited rehearing to provide further factual development as to whether they were reasonable and “necessary to maintain” the divested plants.¹¹ SCE had offset the sales price for each of these divested plants with the cost of these six capital additions projects as of August 31, 2001. D.06-06-038 also ordered limited rehearing with regard to two projects that SCE voluntarily withdrew from its cost recovery request in this

⁷ SCE's Application, pp. 2-3.

⁸ D.06-06-038, p. 3.

⁹ Id.

¹⁰ PROACT Settlement Agreement, Section 2.8, p. 17 (emphasis added).

¹¹ The 6 capital projects were: 1) Ormond Beach (Work Orders 1727-0554, 1727-0555); 2) Etiwanda Control Room Integration (Work Order 1316-7711); 3) Mandalay Economizer (Work Order 1712-0535); 4) Mandalay Pipeline (Work Order 3275-0323); 5) El Segundo Controls (Work Order 1516-0833); and 6) Coolwater Spare Parts (Work Orders 9000-1031, 3393-0044). D.06-06-038, p. 8.

docket. D.04-02-025 granted SCE recovery of these two projects.¹² As of August 31, 2001, SCE had recorded the gain-on-sale from the divested plants that included the capital costs of these two projects as well. SCE assumed that even if they were not eligible for CTC recovery, they should be eligible for recovery from market revenues that resulted in the gain-on-sale. So as of August 31, 2001, the TCBA held a balance that was offset by the gain-on-sale of the divested plants. That gain-on-sale of the divested plants included the amount of all eight capital additions projects for which D.06-06-038 granted limited rehearing. No further adjustment of the TCBA to account for any actions taken from this docket can affect customer rates.

Resolution E-3765 approved the structure and operation of PROACT. The PROACT Settlement Agreement, implemented in Resolution E-3765, required that balances in the TCBA as of August 31, 2001 shall have no further impact on SCE's rates. The PROACT Settlement Agreement and Resolution E-3765 eliminated the TCBA. As a result, SCE wrote off the entire TCBA balance, as well as \$300 million in procurement-related liabilities. There is nowhere to record yet another write-off related to any change in any gain-on-sale of divested plants. SCE could change its write-off of the TCBA balance from \$4.157 billion to \$4.152 billion to reflect the increase in the gain-on-sale for the disallowance of approximately \$5 million associated with the cost of the projects at issue in this proceeding. This would mean that SCE would have taken an earlier disallowance of \$5 million and later written off the new TCBA balance of \$4.152 billion for a total write-off of \$4.157 billion. The net effect on customer rates today is zero. This is because the undercollected balance in the TCBA has already been written off, whether it is a disallowance of \$5 million and a write-off of \$4.152 billion, the total amount is still \$4.157 billion.

Hypothetically, the Commission could order adjustment of rates unrelated to the 1997-98 Capital Additions Projects or the divested plants. However, such an order would not be cost-based ratemaking because it would be unrelated to the costs at issue. In other words, doing so

¹² The two projects TURN refers to are Work Orders 1413-0402 (Alamitos Units 3 and 4 Reconductor) and 3390-0440 (Coolwater Units 3 and 4 Transition).

would prevent cost recovery of expenses or investments already found reasonable by this Commission. The 1997-98 capital additions projects were recovered and/or written off at the time of the implementation of the PROACT Settlement Agreement. That agreement precludes further adjustment of the TCBA from affecting customer rates.

A Commission decision cannot bind future Commissions.¹³ However, the PROACT Settlement Agreement was adopted as part of a Stipulated Judgment of the United States District Court.¹⁴ This Commission cannot contradict the terms of PROACT Settlement Agreement. If the Commission issues an order that changes the TCBA for reflection in customer rates, it must first modify the terms of the PROACT Settlement Agreement. This would violate the judgment of the District Court.

IV.

THE COMMISSION SHOULD IDENTIFY THE ISSUES RAISED IN D.06-06-038 AS MOOT AND CLOSE THIS DOCKET

At this time, nothing more can or should be done to modify the ratemaking for the eight capital additions projects that D.06-06-038 subjects to limited rehearing in this docket. Given the existence of the PROACT Settlement Agreement and the elimination of the TCBA, the Commission should simply find that the issues in this docket have become moot with the passage of time and close the docket.

V.

CONCLUSION

WHEREFORE, Southern California Edison Company respectfully requests that the Commission modify D.06-06-038 to find that there is no need for the hearing concerning the

¹³ D.88-12-083 on Original Diablo Canyon Case Settlement.

¹⁴ Stipulated Judgment, dated October 5, 2001, Southern California Edison Company v. Loretta Lynch, Case No. 00-12056-RSWL (Mex).

eight projects identified in that decision because these capital additions projects were already recovered through the TCBA, which is now closed and can no longer affect customer rates.

Respectfully submitted,

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July 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) PETITION FOR MODIFICATION OF DECISION NO. 06-06-038 on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **24th day of July, 2006**, at Rosemead, California.

/s/

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A.99-04-024

Monday, July 24, 2006

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